

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT L. ATKINSON,	:	Case No. 3:22-cv-236
	:	
Petitioner,	:	District Judge Thomas M. Rose
	:	
vs.	:	Magistrate Judge Kimberly A. Jolson
	:	
MONTGOMERY COUNTY JAIL or	:	
SHERIFF'S DEPT.,	:	
	:	
Respondent.	:	

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. NO. 17); STRIKING THE MOTION TO FILE A SECOND AMENDED COMPLAINT (DOC. NO. 16); AND DISMISSING THE CASE

The Court has conducted a review of the Report and Recommendation of United States Magistrate Judge Kimberly A. Jolson (Doc. No. 17) (the “R&R”), to whom this case originally was referred pursuant to 28 U.S.C. § 636(b). Judge Jolson issued the R&R on October 24, 2022. In the R&R, she explained that the Court had previously entered an Order (Doc. No. 15) on September 14, 2022 that, in relevant part, granted Petitioner thirty days to show that he met the “in custody” requirement of 28 U.S.C. § 2254, yet “Petitioner has failed to respond to the Court’s show cause Order, and the time to do so” had expired. (Doc. No. 17 at PageID 265.) Therefore, the R&R concluded that “this case should be dismissed for [Petitioner’s] failure to comply with the Court’s September 14, 2022 Order.” (*Id.* at PageID 266.) Judge Jolson recommended “that this matter be DISMISSED for want of prosecution and that the Motion to File a Second Amended Complaint (Doc. 16) be STRICKEN from the record in this case.” (*Id.*)

The R&R specifically stated: “If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties

objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).” (Doc. No. 17 at PageID 266.) However, no party filed any objection to the R&R.¹

Noting that no objections have been filed and that the time for filing such objections, if any, under Fed. R. Civ. P. 72(b) has expired, this Court hereby **ACCEPTS and ADOPTS** the Report and Recommendations.

It therefore is **ORDERED** that:

1. The Report and Recommendation filed on October 24, 2022 (Doc. No. 17) is **ADOPTED** in full;
2. The Motion to File a Second Amended Complaint (Doc. No. 16) is **STRICKEN** from the record in this case;
3. This action is **DISMISSED** for want of prosecution;
4. The Clerk is directed to **NOTIFY** the Petitioner; and
5. The Clerk is ordered to **TERMINATE** this case on the docket of this Court.

DONE and ORDERED in Dayton, Ohio, this Monday, November 28, 2022.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

¹ Subsequent to the filing of the Report and Recommendation (Doc. No. 17), Petitioner filed a purported “Amended Complaint” (Doc. No. 18) and “Second Amended Complaint” (Doc. No. 19). However, neither of those documents are objections to the Report & Recommendation.